Supreme Court, U.S.
FILED
JAN 3 2000
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No. 99-933

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY DALE HATLEY,
Petitioner,

v.

JANET DICKERSON McCARTER,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

RESPONDENT'S BRIEF IN OPPOSITION

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32 pp

CORPORATE DISCLOSURE

Respondent, Janet Dickerson McCarter has no corporate affiliations.

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SUMMARY OF ARGUMENT

Petitioner argues that his parental rights were terminated because he exercised his First Amendment rights to report child abuse, that they were terminated based upon an incorrect legal standard, the trial court failed to review the evidence before it signed a the decree terminating his parental rights, the burden of proof was somehow incorrectly shifted to Petitioner, and Petitioner was denied effective assistance of counsel to which he was constitutionally entitled to. As is seen, Petitioner's parental rights were terminated for many reasons, all of which met the clear and convincing standard required by this Honorable Court, the evidence was reviewed prior to the entry of the decree terminating his rights and he was neither entitled to nor denied effective assistance of counsel.

This Honorable Court grants petitions for certiorari only for compelling reasons, such as when there is a conflict of authority between the Courts of Appeal or state courts of last resort, a departure from the usual course of judicial proceedings or there is an important unresolved question of federal law which should be decided by this Honorable Court. None of those issues are present herein.

QUESTION 1

PETITIONER'S PARENTAL RIGHTS WERE NOT TERMINATED FOR CONDUCT PROTECTED BY THE FIRST AMENDMENT

Petitioner's first point misstates both the facts and the law. Petitioner contends that his parental rights were terminated because he made allegations that his daughter was the victim of sexual abuse, this was an exercise of protected

First Amendment rights and, thus, could not constitute the clear and convincing evidence sufficient to form a basis for termination of Petitioner's parental rights.

Petitioner cites *Andrews v. Ballard*, 498 F.Supp.1038 (D. Tex. 1980) as support for his contention that his comments regarding suspected child abuse and having the child examined by physicians was an exercise of protected First Amendment rights. However, *Andrews v. Ballard* held only that the constitutional right of privacy included a patient's right to obtain acupuncture treatment.

Although no one would seriously argue that reporting suspected child abuse is, in and of itself, a protected right, it is equally well settled law, as set forth in *California Transport* v. *Trucking Unlimited*, 404 U.S. 508, 94 S.Ct. 609 (1974), the very case cited by Petitioner, that First Amendment rights are not free from regulation when they are used as part of conduct violative of another valid statute. In *California Transport* v. *Trucking Unlimited*, *supra*, this Honorable Court held that a carrier's institution of suits before administrative agencies and courts, though normally protected by the First Amendment, was not protected when used as part of conduct violative of the antitrust laws.

Although, under the principle set forth in *California Transport* v. *Trucking Unlimited*, *supra*, Petitioner's parental rights could be legally terminated for persistent allegations that his daughter was the victim of sexual abuse, this Honorable Court does not need to reach this question because that is not what occurred in the courts below.

The best description of the facts which formed the basis for termination of Petitioner's parental rights is found in the opinion of the Court of Appeals for the Fifth District of Texas

at Dallas, excerpted by Petitioner at page 4-5 of his Petition For Writ of Certiorari. In addition to the two sentences bolded by Petitioner, reading **"He pressed the charges of sexual abuse against appellee and her mother to anyone who would listen. At one time he accused appellee's father and husband of committing sexual abuse"**, there was significantly more clear and convincing evidence to support the conclusion that Petitioner "engaged in conduct that endangered the physical or emotional well-being of the child, i.e. unfitness.

In the portion of the opinion excerpted by Petitioner, the Court of Appeals For the Fifth District of Texas at Dallas set out the additional conduct of Petitioner that endangered the physical or emotional well-being of his daughter:

> [1] He confided in a friend that asserting the charges of sexual abuse might get him greater custodial rights. [2] He had three pelvic examinations performed on Lauren, [3] the first when she was still an infant and the [4] third after Judge Lewis had expressly admonished him not to have another such examination done. [5] To do the examinations, he selected two doctors with whom he had extended relationships ... . [6] Neither doctor was a pediatrician or gynecologist. [7] Even so, neither doctor supported his claim of sexual abuse. [8] There was also evidence that he did not provide Lauren with medical attention when it was required. [9] There was also evidence that Lauren developed a great anxiety that Hatley would keep her away from her mother. [10] There was evidence that Hatley pinched her or held her tightly enough to cause bruises, and that [11] he did so at least once

because he overheard Lauren tell her mother over the phone that she loved her. [12] Lauren knew that photographs taken of her when she was visiting with Hatley might be used in court against her mother. [13] Lauren also knew that Hatley had hired private investigators to follow her around in her daily routine, on at least one occasion.[1]

QUESTION 2

PETITIONER'S PARENTAL RIGHTS WERE TERMINATED PURSUANT TO CLEAR AND CONVINCING EVIDENCE, THE CORRECT CONSTITUTIONAL STANDARD

Respondent herein sought termination of Petitioner's parental rights under Sections 161.001(1) (D), (E) and (2) of the Texas Family Code.[2]

Section 161.001 of the Texas Family Code provides, *in relevant part*, that a court may order the termination of the parent-child relationship if the court finds by clear and convincing evidence:

> (1) that the parent has:
>
> (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings that

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[1] Opinion of the Court of Appeals, Fifth District of Texas at Dallas; Petitioner's Appendix D, P. 23a, *numbers and emphasis added.*

[2] Petitioner's Appendix F, P. 44a.

endanger the physical or emotional well-being of the child; or,

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangers the physical or emotional well-being of the child; and,

(2) that termination is in the best interest of the child.

The Texas Pattern Jury Charge, 218.1B[3] tracks Section 161.001 of the Texas Family Code, requiring the statutory findings be proved by clear and convincing evidence. Pursuant to the pattern jury charge and the statute, the trial jury herein was given the following question:

Question No. 1:

For the parent-child relationship between **LARRY HATLEY** and the child, **LAUREN ELIZABETH HATLEY**, to be terminated in this case, it must proved by clear and convincing evidence that **LARRY HATLEY** –

1. knowingly placed or knowingly allowed **LAUREN ELIZABETH HATLEY** to remain in conditions or surroundings which endanger the physical or emotional well-being of **LAUREN ELIZABETH HATLEY**; or

[3] Respondent's Appendix A.

2. engaged in conduct or knowingly placed **LAUREN ELIZABETH HATLEY** with persons who engaged in conduct which endangers the physical or emotional well-being of **LAUREN ELIZABETH HATLEY**, AND,

For the parent-child relationship to be terminated in this case, it must be proved by clear and convincing evidence that termination of the parent-child relationship would be in the best interest of the child.

QUESTION NO. 1:

Should the parent-child relationship between **LARRY HATLEY and LAUREN ELIZABETH HATLEY** be terminated?

Answer "Yes" or "No."

ANSWER:_____

The Jury answered Question No. 1 "Yes"[4] and the trial entered a "Decree of Termination of Parent-Child Relationship."[5] In that Decree, the trial court found, by clear and convincing evidence, that Petitioner had engaged in conduct violative of Section 161.001(1)(D), (E) and (2) of the Texas Family Code, *supra*.

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[4] Respondent's Appendix B.

[5] Petitioner's Appendix E.

Petitioner contends the Judgment terminating his parental rights is in contravention of this Honorable Court's opinion in by *Santosky v. Kramer*, 455 U.S. 745 (1992). Petitioner argues that *Santosky* somehow prohibits submission of cases regarding termination of parental rights via global jury questions.[6] Petitioner's contention is, simply put, wrong. In *Santosky*, this Honorable Court held, pursuant to the Due Process Clause of the Fourteenth Amendment, that "[b]efore a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence."[7] The Texas Family Code and the jury instructions, charge and verdict at issue herein all meet that standard.

The entire focus of *Santosky* was on the burden, by clear and convincing evidence, which must be met before one's parental rights may be terminated. What Petitioner does is, without citation, take this Honorable Court's remarks in Footnote 10 of *Santosky, supra,* and attempts to bootstrap them into a conclusion that a global jury charge somehow violates the Due Process requirements regarding termination of parental rights. In Footnote 10, this Honorable Court, in addressing the trial court's refusal to terminate the Petitioner's parental rights on a non-statutory, no-fault basis, noted that such action, "without some showing of unfitness" would probably violate the Due Process Clause. That did not occur in the instant case.

Petitioner seems to argue that to pass Constitutional muster, a decree terminating parental rights must contain the word "unfitness". This is pure legerdemain based upon *dicta*

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[6] Petitioner fails to note that global jury submissions have been a component of federal practice for years.

[7] *Santosky* at 747-748.

in a footnote. Herein, as discussed in that footnote, the jury was instructed that it could find that Petitioner's parental rights could be terminated only if it were proved, by clear and convincing evidence, that Petitioner engaged in conduct which equaled "unfitness" and upon finding by clear and convincing evidence that termination of the parent-child relationship would be in the best interest of the child. The standard applied herein, pursuant to the Texas Family Code and Texas Pattern Jury Charge, exceeded that required by *Santosky, supra*, and constitutes no valid or legal basis for granting Petitioner's Writ.

QUESTION 3

PETITIONER WAS NOT DENIED A FACTUAL REVIEW OF THE RECORD BY THE COURT

Petitioner contends termination of parental rights is a "quasi-criminal" matter and, thus, the burden must remain with the state (or Respondent, standing in stead of the State), citing *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). Petitioner then argues that because the Judge who actually signed the judgment herein was not the same judge who presided at the trial his due process rights have been violated. Petitioner's argument regarding this point is factually and legally incorrect. First, this Honorable Court in *M.L.B. v. S.L.J.*, *supra*, held that the State, in termination of parental rights cases, could not condition the right to appeal (and, by implication, at the trial level also) upon the ability to pay transcript and filing costs. The only discussion therein regarding the burden of proof related to this Honorable Court's statement that only a transcript could reveal the sufficiency or insufficiency of the evidence upon which termination of parental rights had been based.

Petitioner then argues that the trial court herein did not "conduct the statutorily mandated review of the sufficiency of the evidence" before Petitioner's parental rights were terminated, thus denying him due process of law. As stated by the Court of Appeals for the Fifth District of Texas at Dallas, this argument is without merit.[8] In fact, Petitioner had two hearings on his Motion for a New Trial, one before the trial judge who presided over the trial, Judge Burdock, on January 3, 1997, and another before a new judge, Judge Spurlock, on October 16, 1997.

As again described by the Court of Appeals for the Fifth District of Texas at Dallas, Petitioner's argument "thus boils down to the position that, although Judge Burdock [the presiding trial judge] clearly considered all the evidence in the case in deciding to uphold the jury's verdict, Hatley was entitled to have Judge Spurlock [who replaced Burdock after his resignation] review the entire record anew, merely because he happened to be the judge who signed the final judgment."[9]

Despite the failure of Petitioner to obtain and file a Statement of Facts during the 11 months between the trial judge's overruling of Petitioner's Motion For New Trial and the signing of the Judgment by Judge Spurlock, Judge Spurlock, on his own initiative, obtained from the court reporter a transcript of all four experts, Dr. Cox, Dr. Lammers, Dr. Altschuler and Ms. Simpson, of which Petitioner had complained. As noted by the Court of Appeals for the Fifth District of Texas at Dallas, Judge Burdock, the trial judge, reviewed the evidence and Judge Spurlock's signing of the final judgment, based on Judge Burdock's

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8 Petitioner's Appendix D, P. 28a

9 *Id. at* 28a, fn4.

docket entries, was performing nothing more than a ministerial act.[10] The Court of Appeals for the Fifth District of Texas at Dallas also noted that Petitioner made no argument of indigency, which might have entitled him to a free record, and thus he wasn't entitled to same.[11]

The root of Petitioner's argument regarding the "shifting of the burden" is that he was somehow impermissibly required to pay for a transcript of the trial proceedings. As finally and most eloquently noted by the Court of Appeals for the Fifth District of Texas at Dallas:

> *M.L.B.* however, stands for no more that the proposition that the State must bear the costs for preparing an adequate record, in a termination case, for an indigent appellant. Yet even in a criminal case one seeking review must provide a record to the reviewing court if he is able to do so. Hatley makes no argument, and made none before the trial court, that he was indigent; to the contrary, he testified that he had spent around $200,000 in fees and litigation costs. We resolve Hatley's second issue against him.[12]

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10 *Id. at 28a*

11 *Id .at* 29a.

12 *Id.*

QUESTION 4

PETITIONER WAS NEITHER DENIED EFFECTIVE ASSISTANCE OF COUNSEL NOR WAS HE ENTITLED TO IT

Petitioner argues that termination of Petitioner's parental rights is the equivalent of the death penalty, thus requiring the effective assistance of counsel. In making this argument, Petitioner contends that *M.L.B., supra*, holds that "parents are entitled to the appointment of counsel in termination cases" and, correspondingly, said counsel be effective. Without respect to the fact that Petitioner was not indigent, *M.L.B.* does not even address the issue of appointment of counsel, let alone hold such. In *dicta* therein, this Honorable Court did note that in *Lassiter v. Department of Social Servs. of Durham Cty.*, 452 U.S. 18 (1981) it held that appointed counsel for "indigent persons" was not routinely required, but that a case by case determination would suffice.[13]

In *Krasniqi v. Dallas Co. Child Protective Servs.*, 809 S.W. 2d 927 (Tex.App.-Dallas 1991, writ denied), *cert. denied*, 503 U.S. 1006 and 504 U.S. 940 (1992) the Court of Appeals for the Fifth District of Texas at Dallas held that the constitutional right to effective assistance of counsel in criminal actions does not extend to a civil proceeding Court involving the termination of parental rights. This Honorable denied certiorari, that was the law in 1990 and it is the law today.

The factual basis for Petitioner's argument that he was denied effective assistance of counsel is also incorrect, if not

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[13] *Lassiter at* 32.

totally disingenuous. Petitioner argues that he was denied effective assistance of counsel because Petitioner's counsel did not understand that recent cases have ruled testimony that has no scientific basis, such as psychological testimony, is incompetent and should not be presented to the jury. This simply is not the law under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) *and E.I. DuPont de Nemours and Co., Inc. v. Robinson,* 923 S.W. 2d 549 (Tex 1995). In *Nenno v. State*, 970 S.W. 2d 549 (Tex.Crim.App.-1998) the Texas Court of Criminal Appeals surveyed the federal circuits and found general agreement among them that under the "flexible" inquiry approved by *Daubert,* "(1) *Daubert's* prescription that trial judges act as 'gatekeepers' in determining the reliability of expert evidence applies to all forms of expert testimony and (2) the four factors listed in *Daubert* do not necessarily apply outside of the hard science context; instead methods of proving reliability will vary depending upon the field of expertise."[14] Petitioner's assertion that the psychological testimony allowed at trial was incompetent under *Daubert, supra,* and should have been excluded on proper objection is, simply, unfounded and incorrect. This is even more apparent when it is considered that Petitioner's argument that he was denied effective assistance of counsel is based on Petitioner's lawyer's failure to object to testimony from Court appointed psychologists and his offering of even more damning testimony of his own expert psychologist. Of course, Petitioner fails to apprise this Honorable Court that he is, himself, a practicing lawyer.

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[14] *Nenno v. State at* 561.

CONCLUSION

The proceedings by which Petitioner's parental rights were terminated afforded Petitioner all Constitutional rights to which he was entitled, applied the appropriate procedures and burdens and were correct in all particulars. Therefore, Respondent respectfully requests that this Honorable Court deny Petitioner's Petition For Writ of Certiorari.

Respectfully submitted,

/s/_____

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APPENDIX A

PJC 218.01 Termination of Parent-Child Relationship

PJC 218.01A Termination of Parent-Child Relationship--Instruction

This is a case for termination of parental rights. "Termination" means that the parent-child relationship between the parent and the child is ended. All legal rights, privileges, duties, and powers with respect to each other are cut off, except that the child retains the right to inherit from and through the parent unless the court provides otherwise. The rights, privileges, duties, and powers a parent has are–

1. the right to have physical possession, to direct the moral and religious training, and to establish the legal domicile of the child:

2. the duty of care, control, protection, and reasonable discipline of the child;

3. the duty to support the child, including providing the child with clothing, food. shelter, medical care, and education;

4. the duty, except when a guardian of the child's estate has been appointed, to manage the estate of the child, including a power as agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

5. the right to the services and earnings of the child;

6. the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

7. the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

8. the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

9. the right to inherit from and through the child; and

10. any other right, privilege, duty, or power existing between a parent and child by virtue of law.

If no termination of the parent-child relationship is ordered, the court may modify these rights, privileges, duties, and powers by court order.

"Clear and convincing evidence" is that measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true.

You will be required to determine whether termination of the parent-child relationship in this case would be in the best interest of the child. Some factors to consider in determining the best interest of the child are--

1. the desires of the child,

2. the emotional and physical needs of the child now and in the future,

3. any emotional and physical danger to the child now and in the future,

4. the parenting ability of the individuals seeking custody,

5. the programs available to assist those individuals to promote the best interest of the child,

6. the plans for the child by those individuals or by the agency seeking custody,

7. the stability of the home or proposed placement,

8. the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one, and

9. any excuse for the acts or omissions of the parent.

PJC 218.01B Termination of Parent-Child Relationship--Question

For the parent-child relationship to be terminated in this case, it must be proved by clear and convincing evidence that *PARENT failed to support CHILD in accordance with*

PARENT's ability during the period between February 1, 1991, and February 15, 1992.

For the parent-child relationship to be terminated in this case, it must also be proved by clear and convincing evidence that termination of the parent-child relationship would be in the best interest of the child.

QUESTION 1

Should the parent-child relationship between *PARENT* and *CHILD* be terminated?

Answer. "Yes" or "No."

Answer: _____

[See PJC 218.04 for discussion of additional questions.]

COMMENT

Source. The definition of "termination" in the first paragraph of the instruction in PJC 218.01A is based on Tex. Fam. Code Ann. § 15,07 (Vernon Supp. 1994). The list of rights, privileges, duties, and powers of a parent in that paragraph is based on Code § 12.04. The definition of "clear and convincing evidence" is based on Code § 11.15(c) (1986). The list of factors to be considered in determining the best interest of the child is based on *Holley v. Adams,* 544 S.W..2d 367, 371-72 (Tex. 1976). The submission in PJC 218.01B is based on Tex. Fam. Code Ann, § 15.02 (Vernon Supp. 1994),

When to use. The foregoing instructions and question are for use if termination of the parent-child relationship is sought under the provisions of Tex. Fam.Code Ann. § 15.02 (Vernon Supp, 1994). The instruction in PJC 218.01A should, be used in all such cases. The instruction and question in PJC 218.01B should be used (1) if there has been no prior order or decree under Code § 15.05(c) denying a petition to terminate the parent-child relationship of the parent or (2) if the evidence of grounds for termination relates only to conduct alleged to have occurred *after* the date the prior order denying termination was entered. If there has been such a prior order and evidence has been admitted relating to conduct alleged to have occurred *before* the date the order was entered, see PJC 218.03.

Rewording for appropriate grounds under Code § 15.02. In PJC 218.01B, the clause *PARENT failed to support CHILD in accordance with PARENT's' ability during the period between February 1, 1991, and February 15, 1992,* based on Tex, Fam. Code Ann. § 15.02(a)(l)(F) (Vernon Supp. 1994), is included only as an example. That clause should be replaced by the appropriate ground or grounds for termination in Code § 15.02. See paragraph entitled "Selecting and wording relevant grounds for termination,"

Form of submission. In *Texas Department of Human Services v. E.B.*, 802 S.W. 2d 647 (Tex, 1990), the supreme court explicitly approved the broad-form question in PJC 218.01B, which asks the "controlling question" of whether parental rights should be terminated. The jury is questioned neither about the specific culpable act or acts that constitute the statutory grounds for termination of parental rights nor about whether termination is in the best interest of the child.

See the discussion of broad-form questions in Introduction (8).

Selecting and wording relevant grounds for termination. Only those grounds for termination that are supported by the pleadings and evidence should be included in the instruction in PJC 218.01B. For example, if the allegations for termination are based on Tex. Fam, Code Ann. § 15.02(a)(1)(E) (Vernon Supp. 1994) - that the parent "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child" - an instruction to the jury may be phrased in the statutory language. *In re S.H.A.*, 728 S.W.2d 73 (Tex. App.- Dallas 1987, no writ). In such a case, however, if a valid objection is raised that there is no evidence that the parent *knowingly placed the child with persons who engaged in a conduct,* for example, then that portion of the instruction should be omitted,

If more than one child. If more than one child is involved, PJC 218.01B should be repeated for each child.

If both parents. If termination of the parental rights of both parents is sought, PJC 218.01B should be repeated for each parent.

Grandparental access possible. Tex, Fam. Code Ann. § 14.03(c) (Vernon Supp. 1994) provides that grandparental access may be ordered even if parental rights are terminated. In an appropriate case, PJC 215.13 amt PJC 216.04 (grandparental access- original suit) should be adapted.

APPENDIX B

CASE NO. 94-18870-Y

IN THE DISTRICT COURT
OF DALLAS COUNTY, TEXAS
339TH JUDICIAL DISTRICT COURT

IN THE INTEREST OF	)
LAUREN ELIZABETH HATLEY	)
A MINOR CHILD	)
	)

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all instructions that have previously been given to you. I shall now give you additional instructions that you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice, or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court; this is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer another question another way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree on all the answer made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority of any other vote of less than ten jurors. If the verdict and all of the answers in it are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any

answer made by the verdict, those jurors who agree to all findings shall each sign the verdict. These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct, and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other juror who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in the charge in a sense that varies from the commonly understood meaning, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

PREPONDERANCE OF THE EVIDENCE

The term "Preponderance of the evidence" means the greater weight and degree of the credible evidence.

After you retire the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud, and then you will deliberate upon your answers to the questions asked. It is the duty of the presiding juror to:

1. Preside during your deliberations.

2. See that your deliberations are conducted in an orderly manner and in accordance with the instruction in this charge.

3. Write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge.

4. Vote on the questions.

5. Write your answers to the questions in the spaces provided.

6. Certify your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with the other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

_____

JUDGE PRESIDING

DEFINITIONS AND INSTRUCTIONS

1. Termination of Parent-Child Relationship - Definitions and Instructions.

This is a case for termination of parent rights. "Termination" means that the parent-child relationship between the parent and the child is ended. All legal rights, privileges, duties, and powers with respect to each other are cut off, except that the child retains the right to inherit from and through the parent unless the court provides otherwise.

The rights, duties and powers a parent has are ---

1. the right to have physical possession, to direct the oral and religious training, and to establish the legal domicile of the child.

2. the duty of care, control, protection and reasonable discipline of the child;

3. the duty to support the child, including providing the children with clothing, food, shelter, medical care and education;

4. the duty to manage the estate of the child, except when a guardian of the estate has been appointed, including a power as an agent of the child to act in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government;

5. the right to the services and earnings of the child;

6. the power to consent to the marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;

7. the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

8. the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;

9. the right to inherit from and through the child;

10. the right to make decisions concerning the child's education; and,

11. any other rights, privileges, duties, and power existing between a parent and child by virtue of law.

If no termination of the parent child relationship is ordered, the court may modify these rights and duties by court order.

"Clear and convincing evidence" is the measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true.

You will be required to determine whether termination of the parent-child relationship in this case would be in the best interest of the child. Some factors to consider in determining the best interest of the child are--

1. the desire of the child;

2. the emotional and physical needs of the child now and in the future;

3. any emotional and physical danger to the child now and in the future;

4. the parenting ability of the individuals seeking custody;

5. the programs available to assist those individuals to promote the best interests of the child;

6. the plans for the child by those individuals or by the agency seeking custody;

7. the stability of the home or proposed placement;

8. the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one; and

9. any excuse for the acts or omissions of the parent. PJC 218.1A

2. Modification of Conservatorship - Instructions and Definitions.

Texas law has adopted certain terminology that varies from the common usage of the language. In this state, the "primary custodian" of the child is known as the "managing conservator." What is ordinarily called "custody" is known

as "managing conservatorship" under Texas Law.

What is commonly called "visitation" is known as "possession of or access to a child" in Texas. A "noncustodial parent" who is awarded "possessor conservator" is known as the "possessory conservator." PJC 215.1

The best interest of the child shall always be the primary consideration in determining questions of managing conservatorship and possession of and access to the child. PJC 215.2

In determining whether to appoint a party sole or joint managing conservator, you shall consider evidence of the intentional use of abusive physical force by a party against his or her spouse or against any person younger than eighteen years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit. PJC 215.3

A person may not be appointed a joint managing conservator if that person has a history or pattern of past or present child neglect or of physical or sexual abuse directed against a parent, a spouse, or a child. PJC 215.4

"Conservator," when that term is used alone, includes a sole managing conservator, a joint managing conservator, and a possessory conservator.

At all times, each parent appointed a conservator has the following rights, subject to any limitation imposed by court order

* * *

QUESTION NO. 1

For the parent-child relationship between **LARRY HATLEY** and the child, **LAUREN ELIZABETH HATLEY,** to be terminated in this case, it must be proved by clear and convincing evidence that **LARRY HATLEY** --

1. knowingly placed or knowingly allowed **LAUREN ELIZABETH HATLEY** to remain in conditions or surroundings which endanger the physical or emotional well being of **LAUREN ELIZABETH HATLEY**; or

2. engaged in conduct or knowingly placed **LAUREN ELIZABETH HATLEY** with persons who engaged in conduct which endangers the physical or emotional well-being of **LAUREN ELIZABETH HATLEY**, and

For the parent-child relationship to be terminated in this case, it must also be proved by clear and convincing evidence that termination of the parent-child relationship would be in the best interest of the child.

QUESTION NO. 1:

Should the parent-child relationship between **LARRY HATLEY** and **LAUREN ELIZABETH HATLEY** be terminated?

Answer "Yes" or "No."

ANSWER: _____